

June 28, 1906.
[S. 6493.]

[Public, No. 311.]

CHAP. 3562.—An Act To authorize the city of Buffalo, New York, to construct a tunnel under Lake Erie and Niagara River, to erect and maintain an inlet pier therefrom, and to construct and maintain filter beds for the purpose of supplying the city of Buffalo with pure water.

Buffalo, N. Y.
May tunnel under
Lake Erie, etc., for
water supply.

Proviso.
Top of tunnel, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the city of Buffalo, in the State of New York, to construct and maintain a tunnel under Lake Erie, Niagara River, Black Rock Harbor, and the United States lands known as Fort Porter, extending from a point one thousand feet, more or less, southeasterly of the Horseshoe Reef light eleven thousand feet to the present pumping station of the city of Buffalo, and to erect and maintain an inlet pier therefrom, said inlet pier to be located not more than one thousand one hundred feet southeasterly of the present Horseshoe Reef light: *Provided,* That the top of the said tunnel shall be located at least forty feet below mean lake level, and that the city of Buffalo shall maintain a light from sunset to sunrise on the inlet pier at its own expense.

Approved, June 28, 1906.

June 28, 1906.
[H. R. 12086.]

[Public, No. 312.]

CHAP. 3563.—An Act To amend an Act entitled "An Act to incorporate the Washington and Western Maryland Railroad Company."

District of Columbia,
Washington and
Western Maryland
Railroad Company.
Vol. 25, p. 874,
amended.

Location of road
specified.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of Congress entitled "An Act to incorporate the Washington and Western Maryland Railroad Company," approved March second, eighteen hundred and eighty-nine, be, and the same is hereby, amended as follows:

"That the said company, a body corporate as aforesaid, be, and it is hereby, authorized in the construction of its lines to cross the Chesapeake and Ohio Canal and the Government road, commonly known as the River road, at a point about two thousand four hundred feet east of the Chain Bridge, to a point immediately north of said River road, by means of a bridge, with a clearance of at least sixteen feet above the present grade of said River road, and so elevated above the canal as not to interfere with its travel and traffic, and to proceed from said point immediately north of said River road, as aforesaid, northwardly through the lands of the Palisades of the Potomac Company over a right of way acquired from said Palisades of the Potomac Company to the south line of the property of the United States Government, forming a part of the grounds of the receiving reservoir in the District of Columbia and Maryland, crossing said line twenty feet south of a stone, W. A. H. 1, to proceed northwestwardly through the said lands of the Government of the United States to the point of intersection with the line of the Metropolitan Southern Railroad Company; and the Washington and Western Maryland Railroad Company is hereby authorized to construct its road across the said property of the United States forming a part of the grounds of the receiving reservoir as aforesaid, and for the purpose of said construction said company is granted for a right of way the following described land, beginning for the same at a stone marked 'G,' on the boundary between the United States Government and the right of way of the Metropolitan Southern Railroad, which was acquired from the United States Government, and running thence south twenty-nine degrees and thirty minutes west parallel with thirty-seven and sixty-three one-hundredths feet, at right angles from the center line of the Washington and Western Maryland Railroad for a distance of one hundred and sixteen and seven-tenths feet to a point; thence by a curved line to the left, with a radius of five hundred and thirty-six and six one-hundredths feet, parallel with

and thirty-seven and sixty-three one-hundredths feet, at right angles from said center line for six hundred and twelve and sixteen one-hundredths feet to a point; thence south thirty-five degrees and fifty-six minutes east, parallel with and thirty-seven and sixty-three one-hundredths feet, at right angles from said center line for two hundred and twenty-three and six-tenths feet to a point; thence at right angles to last-mentioned course, north fifty-four degrees and four minutes east for seventeen and thirty-seven one-hundredths feet to a point fifty five feet distant from said center line; thence by a curved line to the right with a radius of six hundred and twenty-eight and sixty-nine one-hundredths feet parallel with and fifty-five feet at right angles from said center line of the Washington and Western Maryland Railroad for a distance of two hundred and fifty-seven and forty-six one-hundredths feet to a point; thence south twelve degrees and twenty-eight minutes east parallel to and fifty-five feet distant from said center line for a distance of forty and two-tenths feet to the southern boundary line of the property of the United States Government, the same being the dividing line between the lands of the United States Government and that acquired by the Washington and Western Maryland Railroad Company from the Palisades of the Potomac Company; thence with the said boundary line last mentioned north eighty-six degrees and thirty-six minutes west, deduced bearing (or north eighty-six degrees and sixteen minutes west magnetic bearing, as given on the United States Government plat, dated August fifteenth, eighteen hundred and ninety-one), for a distance of thirty-eight feet, to a stone marked 'W. A. H. 1,' of said plat; thence continuing on said last-mentioned course for a distance of nineteen and two-tenths feet, to the center line of the Washington and Western Maryland Railroad Company; thence farther continuing on said last-mentioned course for a distance of sixty-six feet to a point on said boundary line, the same being the boundary line between the lands of the United States Government and those of Mrs. Ann O'Neal; thence by the boundary line between the lands of the United States Government and those of Mrs. Ann O'Neal north twenty-six degrees and fourteen minutes west, deduced bearing (or north twenty-four degrees and eighteen minutes west magnetic bearing, as given on the United States Government plat dated August fifteenth, eighteen hundred and ninety-one), for a distance of four hundred and ninety-one and fifty-three one-hundredths feet, to a stone planted on said last-mentioned boundary line; thence north thirty-four degrees and fifty-nine minutes west, deduced bearing (or north thirty-three degrees and three minutes west magnetic bearing, as given on plat of United States Government dated August fifteenth, eighteen hundred and ninety-one), for a distance of four hundred and thirty-two and thirty-nine one-hundredths feet to a stone marked 'F,' the same being a corner of the land acquired from the United States Government by the Metropolitan Southern Railroad Company; thence north forty-six degrees twenty-six minutes east, on the right-of-way limit of the said Metropolitan Southern Railroad, for a distance of four hundred and seventy-two and fifty-four one-hundredths feet to the stone marked 'G,' the same being the place of beginning, containing two and ninety one-hundredths acres of land, more or less: *Provided*, That the location and the plans of said road through the lands of the United States shall be approved by the Secretary of War before the commencement of any work on said lands, and the work of construction shall be subject to such regulations as he may prescribe; and the damages for the use and occupation of the right of way herein granted shall be fixed by three army officers, appointed by the Secretary of War, and the payment of said damages so fixed shall be a condition precedent to the exercise of the rights by this Act granted: *Provided further*, That the location, plans,

Proviso.
Approval by Secretary of War.

Payment of damages.

Crossing Chesapeake and Ohio Canal.

and elevation of said railroad for crossing the Chesapeake and Ohio Canal shall be approved by the trustees of the Chesapeake and Ohio Canal before the commencement of any work on the property of the said canal company.

Bridge over river road. "The bridge over the river road shall be constructed with a span sufficient to allow the widening of said road to fifty feet, and the District of Columbia reserves the right to widen this road to fifty feet at any future time.

Embankment. "The slope of the railroad embankment shall not at any point encroach upon the river, or Chain Bridge, road, which is thirty-three feet wide. The railroad company, its successors and assigns, shall construct suitable retaining walls to preserve the full width of the road when necessary to prevent such encroachments.

Crossings. "Whenever it is found necessary by the Commissioners of the District of Columbia to construct a road intersecting the line of the railroad, the railroad authorities, their successors and assigns, shall provide a proper crossing, and shall, at their own expense, make all necessary excavations, masonry, construction, and so forth, and replace their roadbed with a bridge of a span to be determined by the Commissioners of the District of Columbia.

Sewers, water mains, etc. "The said company, its successors and assigns, shall at all times freely and without charge or hindrance of any kind, permit the Commissioners of the District of Columbia to cross the said right of way in the District of Columbia whenever necessary in the construction of any public sewer, water main, or other construction necessary for the public safety, comfort, or health."

SEC. 2. That section twelve of the Act to which this is an amendment be, and the same is hereby, repealed, and in instead thereof there be enacted the following:

Proceedings to secure lands. "SEC. 12. That for the purpose of locating, constructing, maintaining, and operating the yards, stations, tracks, railroads, roundhouses, shops, and other structures or buildings herein, or in the Act to which this is an amendment, provided for, said company is hereby authorized and empowered to take, acquire, and hold in fee simple the land necessary for such purposes; but before proceeding so to do the said company shall first obtain the assent of the owner or owners of said land, and if such owner or owners shall be absent from the said city of Washington, or the District of Columbia, or shall refuse to give such assent on such terms as such company shall approve, or by reason of infancy, coverture, or insanity, or any other cause shall be legally incapable of giving such assent, it shall be lawful for said company to make application, in writing, to the supreme court of the District of Columbia, or a judge thereof, for the appointment of three commissioners to estimate the damages which the owner or owners of the land or other property sought to be taken shall sustain by the taking thereof by the said company. Said application shall describe the land or other property sought to be taken and give the name or names of the owners thereof, as far as the same may be known to said company; and said supreme court of the District of Columbia, or a judge thereof, shall thereupon appoint three discreet and disinterested freeholders of said District of Columbia, none of whom shall be residents or owners of property upon or adjoining the line of said railroad, or interested therein, or related to any person interested in said land, or a stockholder in said company; and before said commissioners shall act the clerk of said court shall administer an oath or affirmation to each of them that he will justly and impartially estimate the compensation that the owner or owners of such lands or other property will be entitled to by reason of the taking of the same by the company; and the said supreme court of the District of Columbia, or a judge thereof, shall appoint a time not less than ten nor more than

Vol. 25, p. 876, amended.

Assent of owners. Condemnation.

Application to supreme court.

Commissioners.

twenty days after due notice to the parties in interest, which notice shall be given in the form required by the order of said supreme court of the District of Columbia, or a judge thereof, appointing said commissioners, and said commissioners shall proceed to estimate, after viewing the premises, the value of the land so proposed to be taken by said company, and the damages, if any, to the residue of the tract so taken or occupied, or to be taken or occupied, or the material so used or taken away, as the case may be, having due regard to and making just allowance for the advantages which may have resulted, or which may seem likely to result, to the owner or owners of said land or materials in consequence of the making or opening of said railroad and of the construction of the works connected therewith, and after having made a fair and just comparison of said advantages and disadvantages they shall estimate and determine whether any and, if any, what amount of damages have been or may be sustained, and to whom payable, and make report in writing signed by them, or a majority of them, and file the same with the clerk of the supreme court of the District of Columbia; and if any damages be awarded, and the report be confirmed by the said court, judgment shall be entered thereon, and if the amount thereof be not paid within thirty days after the entry of such judgment execution may issue thereon as in the case of other judgments of said court for the sum so awarded, and the cost and expenses incurred shall be defrayed by the said railroad company; and each of said commissioners shall be entitled to ten dollars per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such railroad company. Said return of said commissioners shall be confirmed by said court, or a judge thereof, at any time after the expiration of ten days from and after the date of the filing of said report with the clerk of said court, unless an appeal from said award shall be taken and perfected as hereinafter provided; and either party may appeal to the said court within ten days from and after the return of the said award to said court by filing notice of such appeal with the clerk of said court, and upon said appeal the case shall be docketed in said court in the ordinary form, in which the company shall be plaintiff and the other parties shall be defendants, and shall be tried by a jury, if either party shall require the same, according to the ordinary course of trial by jury in said court. Should said company desire to take possession of the land and property mentioned in its said application prior to the determination of the appeal, it shall have the right so to do upon paying into court such sum of money as the court may deem necessary to pay such judgment as the court may render upon the trial of the appeal. In case the judgment rendered by the court upon said appeal, either with or without a trial by jury, shall be for a sum less than the amount awarded by the commissioners aforesaid, then the costs shall be paid by the parties defendant; in case the judgment shall be for a greater sum than the amount awarded by the commissioners, then the costs shall be paid by the company, and judgment for costs shall be rendered accordingly. Upon payment of the judgment rendered by said court, either upon the confirmation of the award or upon the trial of the appeal, to the parties entitled, or into the court, the company shall be entitled to all the rights, interests, and estate of the parties to the proceeding to the same extent as if the same had been legally conveyed by them in fee simple to said company, unless the said company shall within ten days after the rendition of said judgment disclaim the taking of said property, which shall be done in writing and filed in said cause. An appeal shall lie from the judgment of said court to the court of appeals of the District of Columbia, and to the Supreme Court of the United States, as now allowed by law in other cases, and the said company shall be, and is hereby, authorized and empowered to construct.

Report.

Damages.

Confirmation.

Appeals.

Possession pending appeal.

Costs.

Rights, etc., begin on paying award into court or to parties.

Appeal.

Construction.

operate, and maintain said tracks, and in addition thereto tracks to and into the yards and stations aforesaid, and any of them, in connection with the tracks, or any of them, hereinbefore authorized or prescribed."

Time of construction extended.

Vol. 25, p. 876.

SEC. 3. That the period limited and allowed to the Washington and Western Maryland Railroad Company within which they are required, by the tenth section of the Act to which this is an amendment, to complete their road within the District of Columbia, be, and the same is hereby, extended for the period of eighteen months from the date of the passage of this Act, the work to commence within sixty days, and the said Act of incorporation, except as modified by the provisions of this Act, shall remain in force, and all the rights and privileges thereby granted shall be vested in said company.

Amendment.

SEC. 4. That Congress may at any time amend, alter, or repeal this Act.

Approved, June 28, 1906.

June 28, 1906.
[H. R. 13106.]

[Public, No. 313.]

CHAP. 3564.—An Act Granting to the Batesville Power Company right to erect and construct canal and power stations at Lock and Dam Numbered One, upper White River, Arkansas.

White River, Ark.
Batesville Power
Company may con-
struct canal, etc., at
Lock and Dam No. 1
for power station.

Provisos.
Condition.

Control of water.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the Batesville Power Company, a corporation created and organized under a charter granted by the State of Arkansas, its successors or assigns, to erect, construct, operate, and maintain inlet and outlet races, canals, or other structures and a power station or stations at or near Lock and Dam Numbered One, upper White River, Arkansas, and to make such other improvements as may be necessary for the development of water power from Pool Numbered One, and the transmission or application of the same: *Provided,* That the constructions hereby authorized are not built on any lands belonging to the United States and do not in any way impair the usefulness of any improvement made by the Government for the benefit of navigation: *Provided further,* That in the operation of the aforesaid constructions the withdrawal of water from the river shall at all times be under the direction and control of the Secretary of War, and that until the plans and location of the works herein authorized, so far as they affect the interests of navigation, have been approved by the Secretary of War, the improvements shall not be commenced or built, and the Secretary of War is authorized and directed to fix from time to time reasonable charges to be paid by said company for the use of said power.

Time of construction.

SEC. 2. That unless the work herein authorized be commenced within one year and completed within three years from the date hereof the privileges hereby granted shall cease and be determined.

Amendment.

SEC. 3. That the right to alter, amend, or repeal this Act is expressly reserved.

Approved, June 28, 1906.

June 28, 1906.
[H. R. 13190.]

[Public, No. 314.]

Public lands.
Taking, etc., wild
birds or eggs from
breeding grounds, un-
lawful.

CHAP. 3565.—An Act To protect birds and their eggs in game and bird preserves.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to hunt, trap, capture, willfully disturb, or kill any bird of any kind whatever or take the eggs of such birds on any lands of the United States which have been set apart or reserved as breeding